

Serial No.: 09/850,040

Attorney Docket No.: 2001P08145US

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Upon entry of the instant Amendment, claims 1-5, 8-18, and 22-32 are pending. Applicants gratefully acknowledge that claims 16-18 were indicated to be allowable and claims 2, 4-5, and 13 were indicated to be allowable if amended into independent form and to include all the limitations of the base claim and any intervening claims. These claims have been so amended and thus should be allowable. Claim 2 was amended to correct a potential ambiguity. Claims 1, 3, 12, 22, 25, and 31 were amended to more particularly point out Applicants' invention. Claims 14 and 15 were amended to depend from allowed claim 13 and thus should likewise be allowable.

Claim 27 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, paragraph 2 of the Official Action indicates that "[t]he disclosure does not disclose what 'computer program product' is." The examiner's attention is respectfully directed to page 8 of the disclosure, reproduced below:

Cabinet 57 houses a CD-ROM drive 63, system memory and a hard drive (see FIG. 3) which can be utilized to store and retrieve software programs incorporating computer code that implements aspects of the invention, data for use with the invention, and the like. Although CD-ROM 65 is shown as an exemplary computer readable storage medium, other computer readable storage media including floppy disk, tape, flash memory, system memory, and hard drive can be utilized. Additionally, a data signal embodied in a carrier wave (e.g., in a network including the Internet) can be the computer readable storage medium

Since a computer program is clearly disclosed, the examiner is respectfully requested to reconsider and withdraw the rejection.

Claims 27-30 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. In particular, paragraph 4 of the Official Action states "[i]n absence of the computer program source code as claimed, one of ordinary skill in the art would not be able to make and/or use the invention without undue experimentation." Applicants respectfully submit that the Specification describes

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and includes flowcharts describing functions executed by the program code. The Court of Appeals for the Federal Circuit has indicated that "normally, writing code for such software is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed." Thus, "source code listings are not a requirement for adequately disclosing the functions of software." Fonar Corp. v. General Electric Co., 107 F.3d 1543, 41 U.S.P.Q.2d 1801 (Fed. Cir. 1997). As such, the Examiner is respectfully requested to reconsider and withdraw the rejection.

Claims 27-30 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. In particular, the limitation "a computer readable medium that includes data signal embodied in a carrier wave" was objected to. Applicants respectfully submit that the "data signal embodied in a carrier wave" limitation is found only in claim 30, and not claims 27-29. Thus, any alleged defect arising from that limitation should affect only claim 30, and not claims 27-29 as well.

In any case, however, applicants respectfully submit that the recitation of "a computer readable medium that includes data signal embodied in a carrier wave" is appropriate as directed to statutory subject matter. The Court of Appeals for the Federal Circuit has indicated that the "phrase 'subject matter' is not limited to tangible articles or objects, but includes intangible subject matter, such as data or signals, representative of or constituting physical activity or objects." In re Warmerdam, 33 F.3d 1354, 31 U.S.P.Q.2d 1754 (Fed. Cir. 1994); Accord, In re Taner, 681 F.2d 787, 214 U.S.P.Q. 678 (C.C.P.A. 1982). As such, the Examiner is respectfully requested to reconsider and withdraw the rejection.

Claims 1, 3, 8-12, 15, and 25-26 have been rejected under 35 U.S.C. 103 as being anticipated by Pelaez-Ferrigno, U.S. Patent No. 5,577,161 ("Peleaz") in view of Paludan-Mueller, U.S. Patent Application Publication No. 20020118851 ("Paludan"). Applicants respectfully submit that the claimed invention is not taught, suggested, or implied by Pelaez or Paludan, either singly or in combination.

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Claims 1 and 25 have been amended to include limitations similar to those of allowed claim 2 and thus are likewise believed allowable.

Claims 3 and 12 have been amended to recite "wherein the first band comprises sounds outside the range of a human voice and the second band comprises sounds within the range of the human voice." Support is found at page 17, lines 10-12 of the Specification. In contrast, as acknowledged in the Official Action, Pelaez does not provide for how noise is detected in the frequency domain. Instead, Paludan is relied on for such teaching. However, Paludan is exclusively concerned with sound in the range of human hearing (See, e.g., FIG. 2). Since neither reference relates to bands of sounds within and outside the range of human hearing, the Examiner is respectfully requested to reconsider and withdraw the rejection.

Claim 22 has been rejected under 35 U.S.C. 103 as being unpatentable over Pelaez in view of Sorqvist, et al., U.S. Patent No. 6,658,107 B1 ("Sorqvist"). Claim 22 has been amended to include limitations similar to those of allowed claim 2 and thus should likewise be allowable.

Claim 14 has been rejected under 35 U.S.C. 103 as being unpatentable over Pelaez in view of Paludan and further in view of Harris et al., U.S. Patent No. 4,255,620 ("Harris") or Fielder, U.S. Patent No. 5,752,225 ("Fielder"). Claim 14 has been amended to depend from allowed claim 13 and thus should likewise be allowable.

Claims 31-32 have been rejected under 35 U.S.C. 103 as being unpatentable over Pelaez, Paludan, and further in view of Bartkowiak, U.S. Patent No. 6,711,540 ("Bartkowiak"). Claim 31 has been amended to include limitations similar to those of allowed claim 2 and thus should likewise be allowable.

Claims 23 and 24 have been rejected under 35 U.S.C. 103 as being unpatentable over Pelaez, Sorqvist, and Bartkowiak. For reasons similar to those discussed above with reference to claim 22, Applicants respectfully submit that these

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claims, too, are allowable.

For all of the above reasons, Applicants respectfully submit that the application is in condition for allowance, which allowance is earnestly solicited. If any fees are due in connection with the filing of this amendment, the Commissioner is authorized to charge such fees to Deposit Account 19-2179.

Respectfully submitted,

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